

# Memo

To: Independence Ranch Community Services District  
From: Jeffrey A. Minnery  
Date: 10/14/2020  
Re: Increasing Road/Street Maintenance Assessment

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## **Introduction**

Before increasing its road maintenance assessment, Independence Ranch Community Services District (the “District”) must first identify all parcels that will receive a special benefit from the proposed services for which the assessment is proposed to be levied. The assessments must be supported by a detailed engineer’s report prepared by a registered professional engineer certified by the State of California.

The assessment engineer’s report must quantify the proportionate special benefit derived by each identified parcel subject to the proposed assessment in relationship to the entirety of the capital cost of the public improvements or services being provided, and must calculate the amount of the assessment to be imposed on each identified parcel. Additionally, no assessment may be imposed that exceeds the reasonable cost of the proportional special benefit that is conferred on a parcel.

## **Compliance with the procedural requirements of Article XIII D, Section 4(b)**

In order to impose an assessment, a special district must hold a public hearing, mail advance notice of the public hearing to the record owner of each parcel proposed to be assessed and conduct a ballot protest proceeding. The assessment ballot protest proceeding is not an election or a vote for purposes of California Constitution Article II, nor is it subject to the limitations and requirements of the California Elections Code governing elections.

## **Notice Requirements**

The notice must be mailed not less than forty-five calendar days prior to the public hearing, and must include the following information:

1. the amount of the proposed assessment to be imposed on the identified parcel;
2. the total amount to be imposed in the entire assessment district;
3. the duration of the assessment;
4. the reason for the assessment;
5. the basis upon which the assessment was calculated;
6. the date, time, and location of the public hearing on the proposed assessment;
7. a ballot; and
8. a summary of the procedures applicable to the completion, return, and tabulation of the ballots, including a disclosure statement that if the ballots opposing the proposed assessment exceed the ballots submitted in favor of the assessment (referred to as a majority protest), the assessment may not be imposed.

### The Ballot

Because an assessment is imposed on property, only property owners are entitled to submit a ballot. The face of the envelope mailed to the property owner with the ballot and notice must contain, in at least sixteen-point type, the following statement in substantially the following form: "OFFICIAL BALLOT ENCLOSED." The ballot must include the special district's address for the receipt of any completed ballot and a place for the property owner to indicate his or her name, a reasonable identification of the parcel subject to the proposed assessment, and his or her opposition to or support for the proposed assessment. The ballot must be in a form that conceals its contents once it is sealed and delivered by the person submitting the ballot.

### Public Hearing

The public hearing must be conducted on the date and time stated in the notice and must not be held less than forty-five calendar days after the notice of the proposed assessment and public hearing is mailed to the record owner(s) of each identified parcel. At the public hearing, the District must consider all objections or protests to the proposed assessments but should consider only valid ballots when determining whether a majority protest exists. The District's Board may also continue the tabulation of the ballots to a different time and location accessible to the public, provided that the Board announces the time and location of the continued tabulation at the public hearing.

### Does a Majority Protest Exist?

At the conclusion of the public hearing, an impartial person designated by the District (clerk or secretary)—someone who does not have a vested interest in the outcome of the proposed assessment—must tabulate the ballots that were submitted and not withdrawn.

All interested persons must have an opportunity to meaningfully monitor the tabulation process.

The tabulation of the assessment ballots may be continued to a different time or location accessible to the public if the Board announces the time and location at the public hearing. The person tabulating the ballots may use technological methods such as punch cards or optically readable (e.g., bar-coded) ballots.

**A majority protest exists** if, at the conclusion of the public hearing, the ballots submitted and not withdrawn opposing the assessment exceed the ballots submitted in favor of the assessment. The ballots must be weighted according to the proportional financial obligation of each affected property. By way of example, if property owner A's assessment is \$10 and he submits a ballot in opposition to the proposed assessment, and property owner B's assessment is \$1 and she submits a ballot in support of the assessment, property owner A's ballot would be weighted ten times more than property owner B's ballot.

If a majority protest exists, the assessment may not be imposed. If a majority protest does not exist, the Board can vote to impose (by resolution or ordinance) the increased assessment.

### **After the Hearing**

During and after the tabulation, assessment ballots and the information used to determine their weight are considered to be disclosable public records. The ballots must be preserved for a minimum of two years, after which they may be destroyed. In the event of a challenge to the validity of an assessment, the burden is on the public agency to demonstrate compliance with the substantive and procedural requirements of Article XIII D, section 4.